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NON-STOCK CORPORATIONS—RIGHT TO MERGER UNDER VIRGINIA CODE §§ 3821-3822.—On a question of merger under §§ 3821-3822, Code 1919, the Court of Appeals recently *held,* in the case of *Jones* v. *Rhea,*[1] which was an attempt made by the majority members to consolidate the Commonwealth and Westmoreland Clubs of Richmond, Virginia, that the said sections applied to business or stock corporations only and conferred no power on social clubs or non-stock corporations to merge.

The Court placed its decision on the grounds that the right of corporations to merge must be plainly given; that § 3821 is not a general statute but applies only to business and stock corporations and not to non-stock social clubs. This section reads in part as follows:

> "* * * *any corporation* organized, or to be organized * * * may merge or consolidate * * * with any other corporation organized for the *purpose of carrying on the same or similar business* * * * ". (Italics ours)

In reaching its decision the Court said:

> "The general trend of judicial finding is to the effect that corporations for social purposes * * * are not business corporations, and therefore as a general proposition, are not in the legislative mind when statutes are enacted and directed against business corporations."

The Court then concluded that, although corporations for social purposes were not expressly excepted in the statute, the General Assembly had in mind *business corporations* only; that there was no grant of authority for the merger of social non-stock corporations; and that consequently the merger of the two clubs could not be effected.

B. D. A.

LIABILITY OF PRIVATE CHARITY HOSPITAL, TO PAY PATIENTS, LIMITED TO DUE CARE IN SELECTION OF OFFICERS AND SERVANTS.—A husband engaged the services of the defendant hospital for his wife, who was soon to be confined. The hospital was a charitable institution. The husband was ignorant of this fact. He agreed to pay whatever the charge might be and his wife was accepted as a pay patient. Shortly after delivery, the infant was scalded to death by the negligence of the nurse. It was *held* that since negligence in the selection of the nurse was not shown, the hospital was *not liable.*[1] This decision is rested on the grounds (1) that such exemption of a charity hospital is in the interest of public policy and (2) that it may be conclusively presumed, from the

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[1] (Va.) 107 S. E. 814.

[1] Weston's Adm'x *v.* Hospital of St. Vincent of Paul (Va.), 107 S. E. 785.

bare fact that the hospital was a charitable institution, that the tender of service was qualified. A great many cases are cited as sustaining this view.

Two of the judges dissented and their view of the case seems more firmly grounded in reason and principle. As the dissenting opinion points out, the hospital held itself out to render the service required without any qualification and it cannot be conclusively presumed that the tender of service was qualified simply because the hospital was of a charitable nature. The father of the infant accepted the service on the faith of the holding out. He did not even know that the hospital was a charitable institution. No sound public policy demands that the hospital should be held responsible for less than the reasonable care it actually held itself out as undertaking to exercise.

Public policy in the case of the physician caring for a charity patient is declared by the courts to require the same degree of care as in the case of a pay patient.[2]

> "Whether the patient be a pauper or a millionaire, whether he be treated gratuitously or for reward, the physician owes him precisely the same measure of duty, and the same degree of skill and care." [3]

The point is that in both cases the physician holds himself out as competent.

True policy would seem to dictate that reasonable care should be required of a charity hospital as well as of a physician in his charity practice and of a hospital run for profit. It is well known that hospitals in general, and charity hospitals in particular, are not above the need of occasional reminders of the magnitude of their responsibilty to the public. Only where the holding out is qualified should the degree of responsibilty be lessened.

T. L. P.

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[2] Becker *v.* Janinski, 15 N. Y. Supp. 675; McNevins *v.* Lowe, 40 Ill. 209; 30 Cyc. 1573.

[3] Becker *v.* Janinski, *supra.*